

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

HECTOR ENRIQUE ALVAREZ,

Petitioner,

v.

WARDEN GARY WILLIAMS,

Respondent.

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Case No. 1:22-cv-117-LCB-HNJ

ORDER

The Magistrate Judge entered a Report and Recommendation (“the R&R,” Doc. 11) on January 10, 2023. The January 25 deadline for Petitioner’s objections to the R&R has since passed, and no objection has been filed.¹

Upon application of the proper standard of review, a district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made

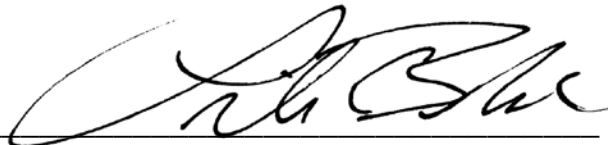
¹ Petitioner did file a document (Doc. 12), which he titled “notice of appeal,” with both this Court and with the Eleventh Circuit. But as stated in the R&R, “[a] party may not appeal the Magistrate Judge’s report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. A party may only appeal from a final judgment entered by a District Judge.” (Doc. 11 at 11.) Furthermore, notwithstanding its title, the “notice of appeal” (Doc. 12) contains no specific objections to the R&R and is thus insufficient. *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009) (“Parties filing objections to a magistrate’s report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.”) (quoting *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988) (finding habeas petitioner’s R&R objections insufficient)). The Magistrate Judge’s R&R clearly stated that an objection must, consistent with Eleventh Circuit precedent, “identify every objectionable finding of fact or recommendation and state the specific basis for every objection.” (Doc. 11 at 10.) Petitioner’s filing (Doc. 12) merely stated the following: “This notice is to take leave of Court to submit motion for ‘C.O.A.’, on (2nd) Second, Successive U.S. 28 U.S.C. 2254.” (Doc 12 at 1.)

by the magistrate judge.” 28 U.S.C. § 636(b)(1). The district judge is obligated to review *de novo* any aspect of the magistrate’s R&R to which a party has “properly objected.” *United States v. Pressley*, 2016 WL 825584, at *1 (N.D. Ala. Mar. 3, 2016) (quoting FED. R. CIV. P. 72(b)(3)). Thus, to necessitate *de novo* review, the objection must “identif[y] specific findings set forth in the R&R and articulate[] a legal ground for objection.” *Leatherwood v. Anna’s Linens Co.*, 384 F. App’x 853, 857 (11th Cir. 2010) (citations omitted). “In contrast, those portions of the R & R to which no objection is made need only be reviewed for clear error.” *Holland v. Colvin*, 2015 WL 1245189, at *2 (N.D. Ala. March 18, 2015) (citing *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006)); *see also id.* at *2 n.3.

After careful consideration of the record in this case, the applicable law, and the Magistrate Judge’s findings, the Court **ADOPTS** and **ACCEPTS** the R&R (Doc. 11). Consistent therewith, the Court **GRANTS** Respondent’s motion (Doc. 6) and **DISMISSES** the petition for a writ of habeas corpus (Doc. 1) without prejudice, to afford Alvarez the opportunity to seek authorization from the Eleventh Circuit before filing a successive petition. Additionally, the Court **STRIKES** Petitioner’s “Notice of Appeal” (Doc. 12).² The clerk of court is directed to close this case.

² Doc. 12. *See* note 1, *supra*.

DONE and ORDERED January 30, 2023.

A handwritten signature in black ink, appearing to read 'L.C. Burke', is written over a horizontal line.

LILES C. BURKE

UNITED STATES DISTRICT JUDGE